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Office of Administrative Law Judges
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Issue Date: 09 June 2003

CASE NO.: 2001-LHC-02412

OWCP NO.: 01-151720

In the Matter of

CURTIS L. WEED
Claimant

v.

BATH IRON WORKS CORPORATION
Employer/Self-Insurer

Appearances:

James W. Case, Esquire (McTeague, Higbee, Case, Cohen, Whitney & Toker), Topsham, Maine, for the Claimant

Evan M. Hansen, Esquire (Preti, Flaherty, Beliveau & Haley), Portland, Paine, for the Employer

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This proceeding arises from claims for worker's compensation benefits filed by Curtis L. Weed (the Claimant) against the Bath Iron Works Corporation (BIW), under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq*. (the Act). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP), the claims were referred to the Office of Administrative Law Judges for hearing. Pursuant to notice, a formal hearing which was conducted before me in Portland, Maine on February 6, 2002, at which time all parties were given the opportunity to present evidence and oral argument. The Claimant appeared at the hearing represented by

counsel, and an appearance was made by counsel on behalf of BIW. The Claimant testified at the hearing, and documentary evidence was admitted at the hearing without objection as Claimant's Exhibits ("CX") 1-12 and Employer's Exhibits ("EX") 1-13. Hearing Transcript ("TR") 11-12. At the close of the hearing, the record was held open to allow the parties time to offer additional evidence and to submit written closing argument. Within the time allowed, the Claimant and BIW both offered the transcript of a deposition of Gordon Thompson Caldwell, M.D. taken on January 28, 2003 which has been admitted as CX 13 and EX 14. The Claimant also submitted additional medical bills which have been admitted without objection as CX 14. The parties both filed helpful closing argument, and the record is now closed.

After careful analysis of the evidence contained in the record, I conclude that the Claimant has established that he sustained a work-related carpal tunnel syndrome injury and that he is consequently entitled to an award of periods of temporary total disability compensation for times when he was unable to work due to recuperation from carpal tunnel release surgeries. I further conclude that the Claimant is entitled to an award of interest on unpaid compensation, medical care and attorney's fees, and that BIW is due a credit in the amount of voluntary compensation payments that it made for a portion of the claimed periods of disability. My findings of fact and conclusions of law are set forth below.

II. Stipulations and Issues Presented

At the hearing, the parties stipulated that: (1) the Act applies to the claim; (2) the Claimant is alleging a gradual bilateral upper extremity injury with March 7, 2000 as the alleged date of injury; (3) there was an employer-employee relationship between BIW and the Claimant at the time of the alleged injury; (4) notice of the alleged injury was timely given; (5) the claim was timely filed; (6) the notice of controversion was timely filed; (7) an informal conference was held on April 5, 2001; (8) the average weekly wage at the time of the injury was $590.92; (9) the Claimant was voluntarily paid temporary total disability compensation for two periods of time – January 12, 2001 through February 12, 2001 and June 29, 2001 through July 15, 2001; and (10) BIW is due a credit for its voluntary compensation payments. TR 7-10. The parties' stipulations are fully supported by the evidence of record, and I adopt them as my findings.

The Claimant seeks additional compensation for two claimed periods of temporary total disability, January 11, 2001 to March 19, 2001 and June 7, 2001 to December 10, 2001, as well as medical benefits and attorney's fees. TR 8-9. BIW contests whether the Claimant's upper extremity condition is causally related to his employment and whether he was totally disabled during the two claimed period. TR 10. The parties thus are in agreement that the issues presented are (1) whether the Claimant's alleged bilateral upper extremity injury is causally related to his employment at BIW and (2) the nature and extent of any disability. TR 8.

III. Findings of Fact and Conclusions of Law

A. Background

The Claimant was born on March 7, 1952 which made him 48-49 years old during the two claimed periods of disability. He was first hired by BIW in December 1978 and worked until October 1982 when he relocated to Arizona for three years and did odd jobs through Manpower. He then returned to Maine and was rehired by BIW on July 7, 1986 to work on the "cable crew" in the Electrical Department. TR 19. The Claimant testified that he had no problems with his hands or fingers at the time that he started working on the cable crew. *Id.*

After a short stint on the cable crew, the Claimant was reassigned to an electrical construction crew on which he worked from the Fall of 1986 until sometime in 1990. TR 25. His work on the electrical construction crew work involved tacking steel foundations for electrical equipment, and he used an air grinder in this line of work to remove paint. TR 25-26. In order to "tack" the foundations, the Claimant would hold the foundation with one hand while holding a welding rod with the other. TR 28. He also did some local cable pulling work, and he had to pull heavy welding leads and air hoses throughout the ship. TR 26-28.

In 1990, the Claimant returned to the cable crew, and he remained in this assignment until 1995. TR 30. As a member of the cable crew, the Claimant worked with 12 to 25 other employees, pulling lengths of heavy cable off of a large spool and through the overhead compartments of ships under construction. TR 21-23. Cable pulling thus required tugging, pulling, pushing, twisting cable and a substantial amount of work overhead. TR 30.

In 1995, the Claimant returned to the electrical construction crew where he worked until 1998. TR 31-32. The Claimant operated a drill, mounted foundations for panels and electrical equipment, and used a pneumatic air drill with a hole saw to cut through steel ship plates. TR 32-34. The Claimant testified that most of his work on the construction crew during this period involved drilling. TR 33. He said that it took the over half a day to drill a single hole through a ship's side shell with double plating and that he needed to apply constant pressure with his hand on the pneumatic drill. TR 33-35. Operating the drill was strenuous and exposed him to a lot of vibration, and he had to stop periodically to rest his hands. TR 34-35. The Claimant also did some installation of electrical foundations and tacking and some "local" cable pulling during this second tour on the construction crew. TR 35. In 1998, he was reassigned back to the cable crew where he pulled cable until he went out of work for surgery in January 2001. TR 38-39.

Regarding his medical history, the Claimant testified that he was diagnosed with insulin-dependent diabetes at the age of 11. TR 44. About four years prior to the hearing, he had an insulin pump installed because he was having difficulty controlling his blood sugar level. TR 44-45, 46-47. The Claimant said that he has been able to control his blood sugar since the insulin pump was installed. TR 45. He also testified that he began to experience cramping in his fingers around 1995. TR 35. He was seen in BIW's medical department and by Drs. Caldwell and Ayers, and he received physical therapy at BIW. TR 36. He continued working and said that his

hands got progressively worse because he was still doing some local cable pulling. TR 37-38. In 1998, he was reassigned back to the cable crew where he pulled cable until he went out of work for surgery in January 2001. TR 38-39.

On January 13, 1999, he filed an injury report with BIW complaining of pain in his left ring finger. CX 9 at 192. He was referred to Donald Kalvoda, M.D., an orthopedic surgeon who diagnosed a left ring finger trigger and performed an outpatient surgical release procedure on March 24, 1999. CX 1 at 1-2. The Claimant was paid compensation by BIW for the period of March 24, 1999 through April 12, 1999 when he was released by Dr. Kalvoda to return to his regular duties. EX 5 at 8; CX 1 at 4.

On July 6, 1999, the Claimant filed an injury report with BIW, stating that he had injured the ring and middle fingers of his right hand and his left elbow and arm while lifting and welding steel foundations at work on June 5, 1999. CX 5 at 50-51 He was referred to physical therapy for these conditions. *Id.* at 55. Also in July 1999, the Claimant suffered non-occupational injuries to his right foot and left knee when he was struck by a motor vehicle that crashed through a restaurant window where he was sitting. CX 1 at 6. He was seen for these injuries in October 1999 by Dr. Kalvoda who noted that although it had been suspected that the Claimant's symptoms of right foot numbness were related to his diabetes, the Claimant adamantly denied any foot numbness prior to the accident. *Id.* He was also evaluated for diabetic polyneuropathy by neurologist Bernard P. Vigna, Jr., M.D. in November 1999 at which time he was described as asymptomatic. CX 2 at 26. As a result of the July 1999 automobile accident, he underwent arthroscopic surgery on his left knee in December 1999 and missed some time from work. CX 1 at 6-8; CX 5 at 74.

The Claimant filed another injury report on March 7, 2000, stating that he noticed a lot of numbness in his arms and hands in October 1999, particularly when he worked in a bent over position. In this report, he stated that he initially blamed this injury on his diabetes, but he noted that his diabetes had been under control for a period of time and that he was unsure whether the injury had been caused by his job. CX 5 at 86. Later that month, the Claimant became ill with pneumonia and was out of work until August 2000. TR 53; CX 1 at 10. Although he was out of work during this period, he testified he continued to have a "little bit" of numbness and tingling in his hands, though not as bad as when he was working." TR 53-54. He also testified that his hand symptoms continued during a two month period when he was out of work during a strike from August to October 2000. TR 54.

In July 2000, the Claimant was referred to Dr. Vigna for EMG testing which he interpreted as showing severe bilateral carpal tunnel syndrome with symptoms he found likely due to "repetitious use at work, superimposed on the predisposing factor of diabetes." CX 2 at 26-27. On January 12, 2000, Dr. Kalvoda performed a right carpal tunnel release and right middle and ring trigger finger release. CX 1 at 14. Following this surgery, Dr. Kalvoda kept the Claimant out of work until March 19, 2001 when he was released to return to work with restrictions against cable pulling and the use of vibratory tools. *Id.* at 17.

On June 29, 2000, Dr. Kalvoda performed a left endoscopic carpal tunnel release and release of the left middle finger trigger. *Id.* at 20. Post-surgery, Dr. Kalvoda reported that the Claimant obtained a good result from the release of the middle finger trigger but continued to have numbness in his left hand. *Id.* at 22. On referral from Dr. Kalvoda, Dr. Vigna conducted an EMG on September 30, 2000 and reported that the study disclosed a return of carpal tunnel syndrome. CX. 2 at 30. In light of Dr. Vigna's findings, Dr. Kalvoda performed a second carpal tunnel release surgery on the Claimant's left hand on October 10, 2001. CX. 1 at 24. The Claimant testified that this second release procedure provided relief from his left hand symptoms, and he was released by Dr. Kalvoda to return to work on December 10, 2001 with restrictions against pushing and pulling heavy cable and using vibratory tools. TR 43; CX 1 at 25. Since returning to work at BIW, the Claimant has been restricted to pulling light cable, and he testified that his hand was "quite good now . . . quite flexible and pain free . . . ." TR 44.

B. Causal Relationship

BIW disputes whether the Claimant's carpal tunnel syndrome is causally related to his employment. A worker seeking benefits under the Act must, as a threshold matter, establish that he suffered an "accidental injury . . . arising out of and in the course of employment." 33 U.S.C. 902(2); *Bath Iron Works v. Brown*, 194 F.3d 1, 4 (1st Cir. 1999) (*Brown*). The Claimant is aided in carrying his burden by section 20(a) of the Act which creates a presumption that a claim comes within its provisions. 33 U.S.C. §920(a). The section 20(a) presumption "applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082 (D.C. Cir. 1976) (*Swinton*), *cert. denied*, 429 U.S. 820 (1976). To invoke the presumption, there must be a *prima facie* claim for compensation, to which the statutory presumption refers; that is, a claim "must at least allege an injury that arose in the course of employment as well as out of employment." *U.S. Industries/Federal Sheet Metal, Inc., et al., v. Director, OWCP*, 455 U.S. 608, 615 (1982). A claimant presents a *prima facie* case by establishing (1) that he or she sustained physical harm or pain, and (2) that an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. *Brown*, 194 F.3d at 4, citing *Ramey v. Stevedoring Services of America*, 134 F.3d 954, 959 (9th Cir.1998) and *Susoeff v. San Francisco Stevedoring Co.*, 19 BRBS 149, 151 (1986).

The Claimant testified that he first began to have cramping symptoms in his fingers during 1995 when he was working on the electrical construction crew and doing a lot of drilling and local cable pulling. While less specific, he also related the numbness in his hands which appeared during the Fall of 1999 to his employment, particularly when he worked in a bent over position. BIW concedes that the Claimant has established a *prima facie* case of causation by showing that he sustained a physical harm or pain and that conditions existed at work which could have caused the harm or pain. BIW Post-Hearing Memorandum at 4. Based on the Claimant's uncontradicted testimony and the medical opinions from Drs. Kalvoda and Vigna, which are discussed in detail below, that the Claimant's hand and finger conditions are related to his employment, I find that the Claimant has made out a *prima facie* showing that he suffered injuries to his hands and fingers that arose out of and in the course of his employment at BIW.

Since the Claimant has made a *prima facie* showing of a work-related injury, BIW, as the party opposing entitlement, must produce substantial evidence severing the presumed connection between such harm and employment or working conditions. *Bath Iron Works Corp. v. Director, OWCP*, 109 F.3d 53, 56 (1st Cir. 1997); *Sprague v. Director, OWCP*, 688 F.2d 862, 865-66 (1st Cir. 1982). Evidence is "substantial" if it is the kind that a reasonable mind might accept as adequate to support a conclusion; *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

BIW's rebuttal evidence consists of a report and deposition testimony taken from Gordon Thompson Caldwell, M.D. EX 1, 14. Dr. Caldwell, who practices physical and rehabilitation medicine or physiatry, examined the Claimant on September 20, 2000. At that time, he diagnosed bilateral carpal tunnel syndrome, bilateral trigger finger and diffuse diabetic polyneuropathy. EX 1 at 3. Dr. Caldwell stated that he could distinguish the Claimant's neuropathies because it was clear that the median nerves are much more involved than other nerves, and he noted that diabetes and repetitive hand activities are both risk factors for the development of carpal tunnel syndrome. *Id.* at 3-4. He then addressed whether the Claimant's findings and diagnoses were caused by a work injury and concluded that they were not:

> You ask whether his findings and diagnoses are caused by a work injury. It is my medical opinion that they are not. I am aware that repetitive hand activities is a major risk factor for developing carpal tunnel syndrome but in Mr. Weed's specific case it is my opinion that the major risk factor and the major causative factor development of his carpal tunnel syndrome is the diabetes mellitus. There are a number of reasons for this. First, his diabetes has been present for many years and it is likely that he has had some mild but progressing polyneuropathy over the years. Second, his carpal tunnel syndrome symptoms did not improve during the months when he was out of work. Third, while his work entails a lot of use of the hands, it also entails a variety of use of the hands so that the same repetitive motion is not continued throughout the day. He does do a lot of pulling of cable but he does other activities as well. Fourth, another way of addressing this problem is to ask, if he were not doing the job as an electrician but did have the chronic diabetes would he be more likely than not to have this degree of carpal tunnel syndrome? I believe the answer is yes. Conversely, if he did not have diabetes mellitus but did work as an electrician at BIW for years would he more likely than not have developed this degree of carpal tunnel syndrome? I believe the answer is no. Stated again, the major risk factor in his case for developing carpal tunnel syndrome is his diabetes. The hand work may be a factor but, as noted above, it did not seem to make much difference in his symptoms when he was out of work from March to August and then again in September of this year.

Id. at 4. Dr. Caldwell supplemented his examination report in a letter dated October 11, 2000 in which he stated that it is his medical opinion that the Claimant's bilateral trigger finger condition is causally related to the Claimant's gripping, heavy grasping and repetitive hand work at BIW. *Id.* at 1.

At his deposition which was taken on January 28, 2002, Dr. Caldwell testified that his diagnosis of carpal tunnel syndrome is based on the Claimant's symptoms of hand numbness, physical examination and electrodiagnostic testing which showed slowing of the medial nerve as it crosses the wrist consistent with carpal tunnel syndrome. EX 14 at 9. Dr. Caldwell further testified that he diagnosed bilateral trigger finger in the middle and ring fingers of the Claimant's hands based on the Claimant's description of his symptoms and history of trigger finger release surgery in 1999, and he said that he diagnosed diffuse diabetic polyneuropathy based on the electrodiagnostic test results which showed abnormalities in nerves, principally the ulnar and ulnar sensory nerves, outside of the carpal tunnel. *Id.* at 10-11. Dr. Caldwell stated that he believed that the Claimant's carpal tunnel syndrome and diffuse diabetic polyneuropathy are both causally related to diabetes. *Id.* at 11-12. He explained that carpal tunnel syndrome is relatively common in people suffering from diabetes, citing a 15 to 20 percent incidence rate, as well as in occupations involving very repetitive hand activities. *Id.* at 12-13. He continued that it was his understanding that the Claimant's work at BIW involved some repetitive hand work but that it was varied throughout the day and not the same type of hand movement that one sees in occupations that are susceptible to development of carpal tunnel syndrome. *Id.* at 13.[1] Dr. Caldwell concluded that "In diabetics, I am aware that there is a statistical association and Mr. Weed clearly has had diabetes for many years and I felt that the diabetes was the most likely causative factor in the carpal tunnel syndrome." *Id.* at 14. Dr. Caldwell added that the fact that the Claimant's carpal tunnel symptoms persisted while he was out of work for extended periods was a significant factor in identifying diabetes, as opposed to work, as the causative factor, because "[o]ne would expect that if work was the causative agent in carpal tunnel syndrome, then stopping work would lead to an improvement or even a reversal of the carpal tunnel syndrome." *Id.* Dr. Caldwell next addressed the Claimant's bilateral trigger finger condition, which he agreed is related to the Claimant's work at BIW, and he testified that the recovery period from an uncomplicated trigger finger release procedure would be a few days in contrast to carpal tunnel release surgery which takes a long time to heal because the procedure involves nerves. *Id.* at 15-16.

On cross-examination by the Claimant's attorney, Dr. Caldwell testified that he worked at BIW in the Medical Department from July 1995 to February 1997, during which time he became acquainted with the work performed at BIW, and that he "guess[ed]" that an electrician would also be involved in activities around the yard just building houses or building buildings where

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[1] The Claimant objected to the question which elicited this answer on foundation grounds that the record did not establish the basis of Dr. Caldwell's knowledge of the Claimant's work activities. EX 14 at 12. As discussed below, Dr. Caldwell was subsequently questioned regarding his understanding of the Claimant's history and duties at BIW. While I do find, as the Claimant argues, that Dr. Caldwell assumed certain facts about the nature of the Claimant's duties that are at variance with the Claimant's description, I find that the Claimant's objection does not require exclusion of the testimony and is instead addressed more appropriately in the determining the weight to be assigned to Dr. Caldwell's opinions in relation to any other opinions in the record.

various jobs are done." *Id.* at 16-17, 19.[2] He said that he was not aware that "pulling cable in and of itself is a risk factor for development of carpal tunnel" though he did "imagine that there could be some job pulling cable that would be repetitive, eight hours a day for many, many days or months, but that's not my impression of what an electrician is doing at BIW." *Id.* at 21. Thus, Dr. Caldwell testified that it was his understanding that the Claimant's cable pulling activities were not sufficiently constant to develop carpal tunnel syndrome. *Id.* at 22. He also said that he had not seen anything in the medical literature on carpal tunnel syndrome indicating that cable pulling or work as an electrician is the type of job associated with the development of carpal tunnel syndrome. *Id.* Dr. Caldwell testified that if the Claimant's work history included use of a pneumatic drill, that would be the type of work associated with a high risk of carpal tunnel syndrome. *Id.* at 22-23. He stated that he based his causation opinion on his understanding that the Claimant's work at BIW involved varied use of the hands rather than repetitive or constant hand activities, and the Claimant's statements in the medical records that he was not sure whether his carpal tunnel symptoms were related to any workplace injury. *Id.* at 23-24. Dr. Caldwell discussed the process of carpal tunnel syndrome and said that diabetes contributes to the development of the syndrome by increasing the accumulation of waste in the cells, which increases the risk for swelling, stiffness and poor healing, and by inhibiting the growth of small capillaries which compromises the body's ability to heal. *Id.* at 27-27. He agreed with the Claimant's attorney that repetitive or stressful activity would still play a role in a diabetic's development of carpal tunnel syndrome although diabetes would be the more significant factor. *Id.* at 27-28. He also agreed that if it were assumed that the Claimant operated a pneumatic drill for sustained and substantial periods of time at BIW, such activity would be significant causative factor for carpal tunnel syndrome, and he acknowledged that the risk of a diabetic developing carpal tunnel syndrome is about 15 times greater than a non-diabetic. *Id.* at 29.

On redirect, Dr. Caldwell agreed that determining whether the Claimant's work contributed to his carpal tunnel syndrome "really is going to be dependent upon how much [the Claimant] really operated pneumatic tools on a consistent basis or how repetitive his activities were", and he stated that based on the fact that the Claimant had the risk factor of diabetes for years, his understanding that the Claimant's work at BIW "involved various activities and . . . various periods where he wasn't working at all . . . and also looking at the fact that he had bilateral symptoms and looking at the fact that other nerves were involved, my impression was that diabetes was the main causative agent in developing his carpal tunnel syndrome." *Id.* at 30.

The Claimant argues that Dr. Caldwell's opinion is inadequate to rebut the presumed causal relationship between the Claimant's injury and his employment because Dr. Caldwell never "affirmatively" stated that Claimant's condition was not caused in part by repetitive work with his hands. Claimant's Post-Hearing Memorandum at 7. The Claimant additionally argues that Dr. Caldwell's opinions do not constitute substantial rebuttal evidence because the doctor conceded

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[2] Although Dr. Caldwell did not mention any prior medical involvement with the Claimant, it appears that he was one of the BIW Medical Department physicians who saw the Claimant in 1995 for his symptoms of finger cramping. *See* TR 36.

that the Claimant's use of his hands at work "may" have been a factor in his development of carpal tunnel syndrome and because he never stated that the Claimant's work was not also a contributing or causative factor. *Id.* at 7-8. Finally, the Claimant contends that Dr. Caldwell's opinions fall short of substantiality because he misunderstood the extent of the Claimant's repetitive hand activities at BIW but acknowledged that even though the Claimant's diabetes was the major or most significant causative factor in his development of carpal tunnel syndrome, repetitive or stressful hand activities also would have played a role. *Id.* at 7-10.

Although Dr. Caldwell's concessions on cross-examination regarding the role that the Claimant's work may have played in the development of his carpal tunnel syndrome make this a close call, I find that his medical opinion is sufficient, albeit barely so, to rebut section 20(a)'s presumption of causation. An employer does not have to exclude any possibility of a causal connection to employment, for this would be an impossible burden; it is enough that it produce medical evidence of "reasonable probabilities" of non-causation. *Bath Iron Works Corp. v. Director, OWCP*, 137 F.3d 673, 675 (1st Cir. 1998) ("*Harford*"). *See also Ortco Contractors, Inc. v. Charpentier*, ___ F.3d ___, 2003 WL 21185785 *3-4 (5 th Cir. 2003) (rejecting requirement that an employer "rule out" causation or submit "unequivocal" or "specific and comprehensive" evidence to rebut the presumption and reaffirming that "the evidentiary standard for rebutting the § 20(a) presumption is the minimal requirement that an employer submit only 'substantial evidence to contrary.'"). In *Harford*, a case where the issue was whether the claimant's exposure to asbestos during the course of his employment caused or contributed to his lung cancer, the Benefits Review Board concluded, contrary to the finding of the administrative law judge, that BIW's expert medical evidence was insufficient to rebut the presumption of causation because BIW's expert conceded that "asbestos may have contributed to claimant's lung cancer and that he could not exclude that exposure as having contributed." 137 F.3d at 675. The Court reversed, holding that the expert's opinion that "the probability is against asbestos" as a cause was sufficient to overcome the presumption. *Id*. In this case, Dr. Caldwell's report and testimony, when read carefully and in their entirety, reflect his reasoned medical judgement that the Claimant's diabetes is the more likely cause of his carpal tunnel syndrome and that the probability is against work activities at BIW as a causative factor. The fact that he did not rule out a causative contribution from work activities and conceded on cross-examination that work activities could have played a role does not dilute his opinion to a point of insubstantiality. *See O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39, 41-42 (2000) (physician's opinion within a reasonable degree of medical certainty that claimant's workplace exposures did not cause of contribute to his medical condition was sufficient to rebut the presumption of causation even though the physician conceded on cross-examination the possibility that claimant's condition was work-related).[3] For these reasons, and bearing in mind that an employer's rebuttal burden is

[3] I find the Board's rebuttal ruling in *O'Kelley* particularly significant as it was made in a case arising in the jurisdiction of the Eleventh Circuit which, unlike the First Circuit in which this matter arises, holds an employer to the higher standard of "ruling out" any possible connection between a claimant's employment and a disabling injury. *See Brown v. Jacksonville Shipyards, Inc*, 893 F.2d 294, 297 (11th Cir. 1990).

minimal, I conclude that BIW has rebutted the section 20(a) presumption that the Claimant's carpal tunnel syndrome is causally related to his employment by producing substantial evidence to the contrary.

As a consequence of BIW's successful rebuttal, the presumption "falls out" of the case, and the Claimant bears the burden of establish causation based on the record as a whole. Bath Iron Works Corp., 194 F.3d 1, 5 (1st Cir. 1999). Upon review of the entire record, I conclude that the Claimant prevails at this next phase of the evidentiary analysis.

Opposing Dr. Caldwell's opinions are reports from Drs. Vigna and Kalvoda who treated the Claimant for his hand and finger problems. Dr. Vigna first saw the Claimant for his hand symptoms on July 25, 2000. CX 2. He had previously seen the Claimant in November 1999 for evaluation of diabetic polyneuropathy which Dr. Vigna described as "asymptomatic" at that time. *Id*. at 26. When seen again in July 2000, the Claimant gave a history of numbness and tingling in both hands over the preceding year "noted during driving, as well as other sustained gripping activities, including his work." *Id*. at 26. Dr. Vigna performed EMG testing and diagnosed severe bilateral carpal tunnel syndrome, and he stated that the Claimant's "symptoms are likely on the basis of repetitious use at work, superimposed on the predisposing factor of diabetes. *Id*. at 27. Dr. Kalvoda, the Claimant's treating orthopedic surgeon, has consistently reported that the Claimant's carpal tunnel syndrome is work-related. CX 1 at 12 - 15, 17, 19. Neither physician was deposed.

In contrast to Drs. Vigna and Kalvoda whose causation opinions consist of a single sentence (Dr. Vigna) and boxes checked on progress reports (Dr. Kalvoda), Dr. Caldwell has written and testified extensively on his opinions regarding the cause(s) of the Claimant's carpal tunnel syndrome. Given the overwhelmingly greater detail in which Dr. Caldwell's opinions are probed and explained in this record, and my finding above that his views on causation qualify as substantial enough evidence to rebut the section 20(a) presumption, it might seem reasonable to conclude that his opinions are deserving of more weight than the brief pronouncements offered by Drs. Vigna and Kalvoda. However, to paraphrase the popular saying, the devil lies in the detail. As the Claimant points out, Dr. Caldwell's testimony revealed a serious misunderstanding of the nature of the Claimant's work at BIW. Regard the Claimant's duties, Dr. Caldwell testified:

> My understanding of Mr. Weed's job as an electrician is that there is some repetition, but there is quite a bit of variation in terms of the actual hand movement. He might be using his hands like we all do in work that's throughout the day, but its different sort of activity, for example, its using a screw driver, its using a plier, it's pulling, it's reaching, it's gripping, it's not the same hand movement that one sees, for example, a typing or keyboard operator.

EX 14 at 13. Contrary to Dr. Caldwell's impression, the Claimant's uncontradicted and entirely credible testimony establishes that he engaged in repetitive and prolonged local cable pulling as well as prolonged use of pneumatic drill while on the electrical construction crew and repetitive heavy cable pulling on the cable crew. The record thus shows that the Claimant's duties at BIW, and the repetitive and stressful use of use of his hands in particular, were markedly different from that of the typical construction electrician that Dr. Caldwell had in mind when he engaged in a "sort of guessing" as to what the Claimant did. *Id.* at 19. The significance of Dr. Caldwell's misunderstanding of the Claimant's work is brought into focus by his testimony on cross-examination that repetitive or stressful activity would play a role in a diabetic's development of carpal tunnel syndrome although diabetes would be the more significant factor. *Id.* at 27-28. He similarly acknowledged that use of a pneumatic drill is the type of work activity that carries a high risk for carpal tunnel syndrome and that such activity for a sustained and prolonged period of time would be significant causative factor for carpal tunnel syndrome. *Id.* at 22-23, 29. Since Dr. Caldwell's testimony clearly indicates that he relied on erroneous assumptions regarding the nature of the Claimant's work and suggests strongly that he would have formed a different opinion given an accurate understanding of the nature and extent of the Claimant's repetitive and stressful hand activities, I find that his opinion on the cause of the Claimant's carpal tunnel syndrome is necessarily weakened. Any doubt that Dr. Caldwell's opinions would have shifted had he possessed an accurate picture of the Claimant's work activities at BIW is erased by the doctor's testimony that he could "imagine" a "job pulling cable that would be repetitive, eight hours a day for many, many days or months" and, thus, sufficient to contribute to development of carpal tunnel syndrome. *Id.* at 21-22. Significantly, Dr. Caldwell was imagining exactly what the Claimant did at BIW, *i.e.*, repetitively using his hands on the cable crew to pull cable eight hours per day for long periods of time and repetitive and stressful use of his hands to operate a pneumatic drill for prolonged periods on the electrical construction crew. I am not persuaded by Dr. Caldwell's testimony that cable pulling is not the type of occupation customarily associated in the medical literature to development of carpal tunnel syndrome because he did not identify the studies discussed in the literature he read or whether workers who perform repetitive cable pulling aboard ships were included in the studies. Moreover, I find that Dr. Caldwell's reliance on an assumption that Claimant's carpal tunnel symptoms persisted during periods when he was not working as a basis for excluding work as a causative agent is undermined by the Claimant's testimony that even though his hand symptoms did persist while he was out of work, there was some improvement in that the numbness and tingling in his hands was "not as bad as when he was working." TR 53-54. Indeed, this is just what Dr. Caldwell said he would have expected if work activities were playing a role. EX 14 at 14.

Based on the foregoing, I find that the terse causation opinions from Drs. Vigna and Kalvoda are not outweighed by the contrary opinion from Dr. Caldwell. To the contrary, I find that Dr. Caldwell's medical opinions, when read in light of what the Claimant actually did at work instead of what the doctor incorrectly guessed that he did, lends support to a finding of a causal relationship. Accordingly, I conclude that the Claimant has established by a preponderance of the evidence that his bilateral carpal tunnel syndrome as well as his bilateral trigger finger condition arose out of and in the course of his employment at BIW.

C. Nature and Extent of the Claimant's Disability

Disability is generally addressed in terms of its nature, temporary or permanent, and its degree or extent, partial or total. *Stevens v. Director, OWCP*, 909 F.2d 1256, 1259 (9th Cir.1990), *cert. denied*, 498 U.S. 1073 (1991). There is no dispute between the parties that any disability suffered by the Claimant was temporary in nature. As to the extent of disability, BIW's only contention is that the additional claimed periods of disability are not compensable because they are attributable to the residuals of the Claimant's carpal tunnel release surgeries which, it contends, are not work-related. BIW Post-Hearing Memorandum at 7. Since I have already concluded that the Claimant's carpal tunnel syndrome is work-related, there is no question that he is entitled to a finding of temporary total disability for the two claimed periods of post-surgical recuperation. In this regard, the record shows that Dr. Kalvoda did not release the Claimant to return to work during the periods in question, and BIW has made no showing that there was suitable alternative employment available to him. Therefore, I find that the Claimant has established that he was under a temporary total disability from January 11, 2001 to March 19, 2001, and from June 7, 2001 to December 10, 2001.

D. Compensation Due and Credits

In view of my finding that the Claimant was temporarily incapacitated from engaging in any employment during the two periods when he was recovering from carpal tunnel release surgeries, I conclude that he is entitled to an award of temporary total disability compensation at 2/3 of the stipulated AWW of $590.92 from January 11, 2001 through March 19, 2001, and from June 7, 2001 through December 10, 2001. Since the parties have also stipulated that the Claimant has already received voluntary compensation payments for a portion of these periods, I further conclude that BIW is entitled to a credit in the amount of its prior compensation payments pursuant to section 14(j) of the Act. *Balzer v. General Dynamics Corp.*, 22 BRBS 447, 451 (1989), *aff'd on recon.*, 23 BRBS 241 (1990).

E. Interest on Unpaid Compensation

Although not specifically authorized in the Act, the Benefits Review Board and the Courts have consistently upheld interest awards on past due benefits to ensure that the employee receives the full amount of compensation due. *Strachan Shipping Co. v. Wedemeyer*, 452 F.2d 1225, 1228-30 (5th Cir.1971); *Quave v. Progress Marine*, 912 F.2d 798, 801 (5th Cir.1990), *rehearing denied* 921 F. 2d 273 (1990), *cert. denied*, 500 U.S. 916 (1991); *Watkins v. Newport News Shipbuilding & Dry Dock Co.*, 8 BRBS 556 (1978), *aff'd in pertinent part and rev'd on other grounds sub nom. Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979); *Santos v. General Dynamics Corp.*, 22 BRBS 226 (1989). Interest is due on all unpaid compensation. *Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78, 84 (1989). The Board has also concluded that inflationary trends in the economy render use of a fixed interest rate inappropriate to further the purpose of making claimant whole, and it has held that interest should be assessed according to the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982) which is the rate periodically changed to reflect the yield on United States Treasury

Bills. *Grant v. Portland Stevedoring Company*, 16 BRBS 267, 270 (1984), *modified on reconsideration*, 17 BRBS 20 (1985). My order incorporates 28 U.S.C. § 1961 (1982) by reference and provides for its specific administrative application by the District Director. The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

F. Medical Care

An Employer found liable for the payment of compensation is additionally responsible pursuant to section 7(a) of the Act for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. *Colburn v. General Dynamics Corp.,* 21 BRBS 219, 222 (1988). As there is no dispute that the carpal tunnel release surgeries and related medical care were reasonable and necessary, I find that BIW is liable for all reasonable and necessary medical care as required by the Claimant for treatment of his work-related bilateral carpal tunnel syndrome. Included in the compensable expenses are bills from Drs. Kalvoda and Vigna, bills from the Parkview Hospital and Pharmacy and mileage expenses incurred by the Claimant incidental to his medical care. *See* CX 8, 14.

G. Attorney's Fees

Having successfully established his right to compensation, the Claimant is entitled to an award of attorneys' fees under section 28 of the Act. *Lebel v. Bath Iron Works*, 544 F.2d 1112, 1113 (1st Cir. 1976). The Claimant's attorney has filed an itemized application for attorney's fees and expenses for work performed before the Office of Administrative Law Judges in the amounts of $4,228.00 and $317.60, respectively, for a total of $4,545.60. BIW has not filed any objection to the fee application.

Upon review, I find that the fee application complies with the requirements of 20 C.F.R. § 702.132(a) and that the fees and costs requested are reasonably commensurate with the necessary work done, taking into account the quality of representation, the complexity of the legal issues involved and the amount of benefits awarded. Accordingly, I will order that BIW pay the Claimant's attorney fees and costs in the amount of $4,545.60.

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following order is entered:

1. The Employer, Bath Iron Works Corporation, shall pay to the Claimant, Curtis L. Weed, temporary total disability compensation pursuant to 33 U.S.C. § 908(b) at the weekly compensation rate of $393.95 from January 11, 2001 to through March 19, 2001, and from June 7, 2001 through December 10, 2001, subject to the Employer's credit pursuant to 33 U.S.C. § 914(j) in the amount of its past voluntary payments of total disability compensation from January 12, 2001 through February 12, 2001 and from June 29, 2001 through July 15, 2001;

2. The Employer shall pay the Claimant pursuant to 33 U.S.C. § 907 for all reasonable and necessary medical care as required for treatment of his work-related bilateral carpal tunnel syndrome including the bills from Drs. Kalvoda and Vigna, the bills from the Parkview Hospital and Pharmacy, and the mileage expenses incurred by the Claimant incidental to his medical care as set forth in Claimant's Exhibits 8 and 14;

3. The Employer shall pay the Claimant interest on any past due compensation benefits at the Treasury Bill rate applicable under 28 U.S.C. § 1961 (1982), computed from the date each payment was originally due until paid;

4. The Employer shall pay the Claimant's attorney, James W. Case, fees and costs in the in the amount of $4,545.60; and

5. All computations of benefits and other calculations provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts
DFS:dmd